

Before the
Federal Communications Commission
Washington, DC 20554

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In the matter of)
)
Implementation of Section 10 of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Indecent Programming and)
Other Types of Materials on)
Cable Access Channels)

MM Docket No. 92-258

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF WAYCROSS COMMUNITY TELEVISION

Comments filed in this proceeding by cable industry representatives indicate that, if cable companies are given broad authority to implement the regulations adopted by the FCC pertaining to programming on access channels, many of them will exercise it broadly, even if the result is to prevent the use of access channels altogether.

Such a result cannot possibly be reconciled with the basic purposes of the Cable Act, which include promoting diversity. As a result, Waycross Community Television urges the Commission to reject any proposal that would leave the operator with broad discretion to ban programming on PEG access channels. Instead, as urged by the Alliance for Community Media and others, the FCC should adopt rules that carefully and narrowly define the circumstances under which PEG access programming may be banned.

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The Alliance for Community Media has identified constitutional and statutory reasons to adopt a narrow definition of the PEG programming which may be banned in comments filed in this proceeding. Other reasons have moved Waycross Community Television to reply.

Several operators have suggested that, if given the broad authority to review PEG access programming for content, they would anticipate increased costs and delays in PEG cablecasts. Both results would limit the cost/benefit value of cable for consumers.

Time Warner Entertainment Company, L.P. (TWE), whose subsidiary Warner Cable is our local operator, has indicated in comments to the Commission that to preview all PEG access programming would significantly cost operators or other parties responsible. Indeed, our local access organization would suffer financial hardship if we had to incur staff and equipment costs, which we project to exceed \$10,000 per annum. Filtered speech is not free. Ultimately, local cable consumers would need to pay for this preview protection from indecent and obscene programs, even though such material has never been cablecast through Waycross Community Television during our entire ten year programming history.

In addition to the financial impact, granting broad authority to determine banned programming would

precipitate a delaying disincentive to speech. Since the cable companies expect to check tapes or scripts to protect themselves from liability for obscenity, the program participants and cable viewers would suffer from the resulting delays. Content previews for access programs would necessarily increase the time between the submission of programming and its appearance on a PEG access channel.

Waycross Community Television desires live programming capacity with our next local cable franchise, so our local communities can thrive on more timely exchanges of thoughts and ideas. By contrast, preview procedures would further impede these exchanges and condemn PEG access to the relevance of last week's news.

As an example, Waycross Community Television plans to promote the free use of our access facilities to local political candidates for the election campaign next November. Candidates are apt to want to show statements addressing issues raised during their campaigns. If content screening is required before PEG cablecasts, such programs may be irrelevant to the current debate by the time they are shown. Some programs might not even clear a preview process prior to the election. So candidates would be driven away from PEG access—only those who could afford paid advertising would be able to use television in their campaigns.

While campaign exceptions might address the delay problems in this particular instance, previewing could similarly negate the value of PEG access in other circumstances. Local issues do not vanish after elections and neither does the need for timely intercourse in the community, not only for political speech, but also for artistic, athletic and the myriad of other types of access programming.

Some operators have suggested they wish to use the Commission's rules to require producers to provide insurance, indemnification, and in some cases, bonds. We agree that contamination between the vehicle and the user is unwarranted and cable operators, as well as access centers, should be no more responsible for a user's speech on PEG channels than a state or driving school should be held accountable for a licensed driver's actions on the highways. But the FCC should not spread Congress' misplaced liability beyond the indemnity relief already available.

Users should accept responsibility for what they say and show on PEG access, and they do here. The first clause of our Cablecast Agreement, required with each program, reads as follows:

1. The applicant hereby accepts full responsibility for the content of programming submitted for

cablecast. The applicant agrees to indemnify and hold harmless Warner Cable Communications, Inc. (Warner Cable); the Community Programming Board of Forest Park, Greenhills and Springfield Township (CPB); and their affiliates, officers, agents and employees from liability, legal fees and other expenses incurred as a result of cablecast(s) of this program or series.

(A Cablecast Agreement & Application for playback of a program series is valid and binding for each and every installment.)

Specific responsibility for insuring against obscene speech is included in the second clause of this agreement:

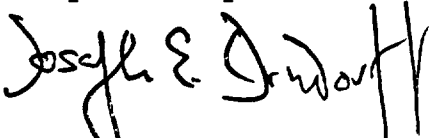
2. The applicant hereby confirms ownership of all necessary rights to present this programming for cablecast. As the applicant asserts cable presentation rights, he/she accepts legal responsibility for obtaining any and all releases necessary to present audio and/or video material on Warner Cable. Responsibility is also accepted by the applicant for insuring that programming submitted is not obscene, libelous, or otherwise prohibited by law.

Beyond indemnifying the cable company and access center, insurance or bond requirements would be

disincentives to access use and have a chilling effect on speech. As long as individuals and organizations own their presentations, these extra requirements should not be imposed.

For reasons stated above, the Commission should reject proposals that cable companies be granted broad authority to censor PEG programming or impose insurance and bonding requirements upon PEG users. Waycross Community Television urges the Commission to adopt the proposals made by the Alliance for Community Media.

Respectfully Submitted,



Joseph E. Orndorff, Chairman
Waycross Community Programming Board



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